

2017-48281

COURT: 080th

FILED DATE: 7/20/2017

CASE TYPE: Debt/Contract - Consumer/DTPA



WAHLBERG MCCREARY INC

Attorney: BARTON, DANIEL PATRICK

VS.

ARCH INSURANCE GROUP INC

Attorney: ISBELL, JAMES N.

Document	Post Date Jdgm	Pgs
Defendants Arch Insurance Group, Inc., York Risk Services Group, Worley CSD and Steve Mazey's Original Answer and General Denial	09/22/2017	2
Defendant's Original Answer to Plaintiffs' Original Petition	09/05/2017	7
Citation	09/05/2017	2
Citation	09/01/2017	3
Citation	09/01/2017	3
PLAINTIFFS ORIGINAL PETITION	07/20/2017	18
Civil Case Information Sheet	07/20/2017	1
Civil Process Request	07/20/2017	2

CAUSE NO. _____

JUDICIAL DISTRICT

purpose of accumulating monetary profit and has its principal place of business at 4801 Woodway Drive, Houston TX 77056. Arch regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. Arch does maintain an agent for service in Texas and accordingly may be served with process by serving certified mail, return receipt requested, to Bob Gefers, 4801 Woodway Dr., Houston TX 77056- 1884 or wherever the company may be found. Citation is requested, at this time.

4. Defendant Worley CSD (“Worley”) engaged in the business of insurance and insurance adjusting in Texas, operating for the purpose of accumulating monetary profit. Worley regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. Worley does maintain an agent for service in Texas and accordingly may be served with process by serving certified mail, return receipt requested, to C.T.Corp, 1999 Bryan Street, Suite 900, Dallas TX 75201-3136, or wherever the company may be found. Citation is requested, at this time.

5. Defendant York Risk Services Group (“York”) engaged in the business of insurance and insurance adjusting in Texas, operating for the purpose of accumulating monetary profit. regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. York does maintain an agent for service in Texas and accordingly may be served with process by serving certified mail, return receipt requested, to Corporation Service Co. 211 E. 7th Street, Suite 620, Austin TX 78701-3218, or wherever the company may be found. Citation is requested, at this time.

6. Defendant Steve Mazey is an individual and property adjuster on behalf of Defendant Arch. These causes of action arise out of Steve Mazey’s decision to ignore obvious damage to the roof resident and may be served with personal service by a process server at his place of business at

1117-A Patricia, San Antonio TX, or wherever he may be found. Citation is requested at this time.

C. STATUTORY AUTHORITY

7. This suit is being brought, in part under the Tex. Bus. & Comm. Code, Sec. 1741 *et seq.*, commonly known as the Deceptive Trade Practices and Consumer Protection Act, and cited in this petition as “DTPA”. This suit is also brought in part, under the Texas Insurance Code, Chap. 541.151 *et seq.*, Chap. 542.051 *et se.*, and Tex. Civ. Prac. & Rem. Code § 38.01 *et seq.*

D. JURISDICTION

8. This Court has jurisdiction over the cause of action because the amount in controversy is within the jurisdictional limits of the Court. Plaintiff stipulates that the damages in this matter exceed \$1,000,000, excluding interest and costs, and that the damages are within the jurisdictional limits of the court. Plaintiff contends that the determination of damages is within the sole discretion of the Judge and Jury, but made stipulation as required by TEX.R.CIV.P. 47.

9. The Court has jurisdiction over Defendants Arch, York and Worley, because these defendants engage in the business of insurance/insurance adjusting in the State of Texas and the causes of action arise out of Defendant’s business activities in the State of Texas.

10. The Court has jurisdiction over Steven Mazey because he is an individual and independent estimator/property adjuster on behalf of Defendants Arch, York and Worley. This cause of action arises out of Defendant’s actions and/or inactions during the investigation and evaluation of Plaintiff’s windstorm/hail storm claim in the State of Texas.

E. VENUE

11. Venue for this suit is proper in Harris County UNDER TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to this claim occurred in Harris County and the Defendants principle place of business is in

Harris County Texas.

F. NOTICE AND CONDITIONS PRECEDENT

12. Defendants have been provided notice, in writing, of the claims made by Plaintiff in this petition, including Plaintiff's actual damages and expenses in the manner and form required.

13. All conditions precedent necessary to maintain this action and in order to maintain claim under the insurance policies in question have been performed, occurred, or have been waived by Defendants.

G. FACTS

14. This lawsuit arises out of the following transactions, acts, omissions, and/or events.

15. The Property owned by Wahlberg was severely damaged by a two storm events occurring in April 2016 and May 2016. After, the May 2016 storm the property had significant damage and developed numerous additional leaks.

16. According to estimates and inspections the roof needs to be completely replaced.

17. Defendant Arch assigned Steven Mazey/York/Worley as the independent claim adjuster and estimator to determine the extent of the damages suffered by Plaintiff. Defendant Adjusters, who inspected The Property, made numerous errors in estimating the value of Plaintiff's claim, all of which were designed to intentionally minimize and underpay the loss incurred by Plaintiff. Defendant Adjusters failed to fully quantify Plaintiff's damages, and instead, grossly undervalued the loss, demonstrating that he did not conduct a thorough investigation of Plaintiff's claim. Defendant Adjusters conducted a substandard inspection of The Property evidenced by their report, which failed to include all of Plaintiff's storm damages noted upon inspection. The damages included in the estimate were grossly undervalued and did not allow for adequate funds to cover the cost of repairs to all the damages sustained. Defendant Adjusters failed to thoroughly review and

properly supervise the inspection of the Property which ultimately led to approving an improper adjustment and an inadequately unfair settlement of Plaintiff's claim. Further, Defendant Adjusters knowingly and intentionally overlooked damages at the Property and used their own inadequate and biased investigation as the basis for erroneously denying a portion of Plaintiff's claim. As a result of Defendant Adjusters' conduct, Plaintiff's claim was underpaid and partially-denied. Without basis and with intent to damage the Plaintiff, Defendant Adjusters concluded that the admitted water intrusion throughout the sub surface of the roof was not the result of the admitted damage to roof caused by the windstorm. This wrong determination was intentionally made to undervalue the claim.

18. Plaintiff timely filed its respective claims with Defendants.

19. Arch, through the Adjusters, improperly adjusted the claim. Specifically, the Adjusters inspected the property and found damage which required HVAC repair, significant water extraction and ceiling repair. Although it was evident that water intrusion had occurred the Adjusters specifically and intentionally ignored the issues with the roof and grossly undervalued the damages cause the storm. Further, the adjusters intentionally miscalculated the damages to which they admitted in their estimate.

20. All payments on Plaintiff's policy were current, and the policy was in full force on the date of the loss. Although the claims were submitted in proper form and within the time specified in the insurance policy, Defendants have failed to properly pay for all the damages, failed to properly adjust the claims, and failed to properly estimate the value of such damages. In fact, Defendants have improperly delayed the adjustment of the claims and intentionally misrepresented the facts and circumstances of this loss to the Plaintiff.

21. To date Defendants have failed to meet the basic obligations to Plaintiff, which include conducting an investigation into the cause of loss, issuing timely payments for undisputed

damages, issuing payment for all lines of coverage owed under the policy, furnishing a written explanation of which items are covered under the previously issued payment, and failing to confirm or deny the claim within a reasonable amount of time.

22. Plaintiff has attempted on numerous occasions to obtain full and complete payments for covered losses pursuant to Arch's insurance policy.

23. Defendant Arch, acting through their agents, servants, representatives and employees have failed to properly investigate, evaluate and adjust Plaintiff's claims for benefits in good faith and have further failed to deal fairly with Plaintiff.

24. Defendants have failed and refused to evaluate the information surrounding facts regarding Plaintiff's covered claims, choosing instead to hide behind palpably incorrect assumptions of its agents, employees, and/or consultants.

25. Defendants failed or refused and continue to fail or refuse to pay covered claims on a timely basis as required by the insurance contract and as required by the Texas Insurance Code. Instead Defendants have wrongfully delayed or denied claims when liability for coverage under the policies was reasonably clear.

26. In contrast, Plaintiff has cooperated with every request made by Defendants and has displayed, at all reasonable times, all of its relevant records, documents, buildings, and contents that are subject to this catastrophic loss.

27. Defendants have persisted in delay or denial to pay the full amounts due for Plaintiff's claims even though a person of ordinary prudence or care would have done otherwise.

28. No reasonable basis exists for Defendants to delay and/or refuse to provide covered benefits due and owing under the insurance policies in question.

29. No reasonable basis exists for Defendants to delay and/or refuse to pay covered

benefits due and owing under the insurance policy in question.

30. Defendants refused/and or failed to properly evaluate the obvious damages to The Property, forcing Plaintiff to hire its own experts and incur additional expenses.

31. Defendants, after conducting inspections of the damaged insured properties and after having received Plaintiff's information regarding the damages, refused and/or failed to pay undisputed monies/funds owed to Plaintiff.

32. Defendants refused to fully compensate Plaintiff under the terms of the policies, even though Defendants, failed to conduct a reasonable investigation in violation of the Texas Unfair Competition and Unfair Practices Act, Tex. Ins. Code § 541.060(7).

33. Defendants performed outcome oriented investigations of Plaintiff's claims, which resulted in biased, unfair, and inequitable evaluations of Plaintiff's losses on the properties. Defendants' conduct constitutes violations of Tex. Ins. Code 541.060(7).

34. Defendants failed to meet their obligations under the Texas Insurance Code regarding payment of claims without delay. Specifically, Defendants have delayed full payment of Plaintiff's claims longer than allowed and to date Plaintiff has not yet received full payment for the claims. Defendants are in violation of Tex. Ins. Code § 542.055.

35. From and after the time Plaintiffs' claims were presented to Defendants, their liability to pay the full claims in accordance with the terms of the policies were reasonably clear. However, Defendants refused to pay Plaintiff in full, despite there being no basis whatsoever on which a reasonable insurer would have relied on to deny full payment. Defendants' conduct constitutes a breach of the common law duty of good faith and fair dealing.

36. As a result of Defendants' acts and omissions, Plaintiff was forced to retain the undersigned attorneys who are representing Plaintiff in this cause of action.

37. Plaintiff's experiences are not isolated cases. The acts and omissions committed by Defendants in this case, or similar acts and omissions occur with such frequency that they constitute a general business practice of Defendants with regard to handling these types of claims. Defendants' entire process is unfairly designed to reach favorable outcomes for the insurance company at the expense of policyholders.

H. CAUSES OF ACTION AGAINST DEFENDANTS

COUNT I - BREACH OF CONTRACT

38. Plaintiff incorporates paragraphs one through thirty-nine as though fully stated herein.

39. Plaintiff and Defendant Arch executed valid and enforceable written insurance contracts providing insurance to the insured location at 3601 Bell Drive, Fort Worth, Texas, Plaintiff from the peril of windstorm among other perils. Defendants have complete copies of these policies in their possession.

40. All damages and loss to The Property were caused by a direct result of a peril for which Plaintiff was insured pursuant to the policy, namely windstorm damage.

41. Plaintiff suffered significant losses with respect to The Property and additional expenses as a result of the windstorm damage.

42. Plaintiff submitted claims to Defendants pursuant to the contracts of insurance for damages as a result of windstorm damage.

43. Plaintiff provided Defendants with proper notice of damage to the exterior and interior of The Property.

44. Defendants failed to properly evaluate the damages resulting from the covered cause of loss, windstorm.

45. Defendants failed to retain the appropriate experts and/or consultants to evaluate the

windstorm damages to the subject properties.

46. As of this date, Defendants have failed to pay for the windstorm damages to Plaintiff's Property.

47. Plaintiff has attempted on numerous occasions to obtain full and complete payment for covered losses pursuant to Insurance Policy.

48. Defendants Arch, York and Worley acting through their agents, servants, representatives, and employees, have failed to properly investigate, evaluate, and adjust Plaintiff's claims for benefits in good faith and have further failed to deal fairly with Plaintiff.

49. Defendants Arch and Adjusters have failed and refused to evaluate the information surrounding facts regarding Plaintiffs' covered claims, choosing instead to hide behind palpably incorrect assumptions and conclusions of its agents, employees, or consultants.

**COUNT II – VIOLATIONS OF THE TEXAS
UNFAIR CLAIMS PRACTICES ACT**

50. Plaintiff incorporates the preceding paragraphs as though fully stated herein.

51. Defendants are required to comply with Tex. Ins. Code §§ 541.051; 541.060; 541.061; and 541.151.

52. Defendants' conduct constitutes multiple violations of the Texas Insurance Code, including refusing to pay a claim without conducting a reasonable investigation with respect to the claim.

53. Defendants misrepresented the insurance policy to Plaintiff and is in violation of Tex. Ins. Code 541.061 *et seq.* including:

- (1) Making an untrue statement of material fact;
- (2) Failing to state a material fact necessary to make other statements made not misleading, considering the circumstances under which the statements were

made;

- (3) Making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact;
- (4) Making a material misstatement of law;
- (5) Failing to disclose a matter required by law to be disclosed, including failing to make a disclosure in accordance with another provision of this code.

54. Defendants' unfair settlement practices, as described above, of failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the claims, even though Defendants' liability under the policy was reasonably clear, constitutes an unfair method of competition, and an unfair and deceptive act or practice in the business of insurance. Tex. Ins. Code §§ 541.051; 541.060; and 541.061.

**COUNT III – NON-COMPLIANCE WITH TEXAS INSURANCE CODE
CHAPTER 542 PROMPT PAYMENT OF CLAIMS ACT**

55. Plaintiff incorporates the preceding paragraphs as though fully stated herein.

56. Defendants' conduct constitutes multiple violations of the Texas Prompt Payment of Claims Act. Tex. Ins. Code Chapter 542. All violations made under this article are made actionable by Tex. Ins. Code Section 542.060.

57. By accepting insurance premiums but refusing without a reasonable basis to pay benefits due and owing, Defendants have engaged in an unconscionable action or course of action as prohibited by the DTPA sec. 17.50(a)(1)(3) in that Defendants took advantage of Plaintiff's lack of knowledge, ability, experience, and capacity to a grossly unfair degree, that also resulted in a gross disparity between the consideration paid in the transaction and the value received, in violation of Chap. 541 of the Texas Insurance Code.

**COUNT IV – BREACH OF COMMON LAW
DUTY OF GOOD FAITH AND FAIR DEALING**

58. Plaintiff incorporates the preceding paragraphs as though fully stated herein.

59. Defendants' conduct, as fully specified in Section G as well as the preceding paragraphs, constitutes a breach of the common law duty of good faith and fair dealing owed to Plaintiff pursuant to their insurance contracts.

60. Defendants' conduct, as described above, was in direct contradiction of the applicable industry standards of good faith and fair dealing.

61. Defendants' failure, as described above, to adequately and reasonably investigate, evaluate, and pay the benefits owed under the insurance contract, knowing full well through the exercise of reasonable diligence that its liability was reasonably clear, resulted in a breach of the duty of good faith and fair dealing.

I. CAUSES OF ACTION AGAINST DEFENDANT ARCH

COUNT V– UNFAIR SETTLEMENT PRACTICES

62. Plaintiff incorporates the preceding paragraphs as though fully stated herein.

63. Defendant Arch is an entity that is required to comply with Tex. Ins. Code §§ 541.051; 541.060; 541.061, and 541.151.

64. Defendant Arch's unfair settlement practice, as described above, of misrepresenting to Plaintiff material facts relating to the coverage at issue, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX.INS.CODE §541.060(1).

65. Defendant Arch's unfair settlement practice, as described above, of failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the claims, even though Defendant Arch's liability under the Policy was reasonably clear, constitutes an unfair method of

competition and an unfair and deceptive act or practice in the business of insurance. TEX.INS.CODE §541.060(2)(A).

66. Defendant Arch's unfair settlement practice, as described above, of failing to promptly provide Plaintiff with a reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for its offer of a compromise settlement of the claims, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX.INS.CODE §541.060(3).

67. Defendant Arch's unfair settlement practice, as described above, of failing within a reasonable time to affirm or deny coverage of the claims to Plaintiff or to submit a reservation of rights to Plaintiff, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX.INS.CODE §541.060(4).

68. Defendant Arch's unfair settlement practice, as described above, of refusing to pay Plaintiff's claim without conducting a reasonable investigation, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX.INS.CODE §541.060(7).

69. Defendant Arch's conduct described above compelled Plaintiff to initiate a lawsuit to recover amounts due under its policy by offering substantially less than the amount ultimately recovered. Defendant Arch refused to even offer more than its own grossly undervalued estimates despite actual damages which were much greater. This continued failure compelled Plaintiff to file suit. TEX.INS.CODE §542.003(5).

**COUNT VI – NONCOMPLIANCE WITH TEXAS INSURANCE CODE:
THE PROMPT PAYMENT OF CLAIMS**

70. Defendant Arch's conduct constitutes multiple violations of the Texas Insurance Code, Prompt Payment of Claims. All violations made under this article are made actionable by TEX.INS.CODE §542.060.

71. Defendant Arch's failure to acknowledge receipt of Plaintiff's claim, commence investigation of the claims, and request from Plaintiff all items, statements, and forms that they reasonably believed would be required within the applicable time constraints, as described above, constitutes a non-prompt payment of claims and a violation of the TEX.INS.CODE §541.055.

72. Defendant Arch's failure to notify Plaintiff in writing of its acceptance or rejection of the claims within the applicable time constraints, constitutes a non-prompt payment of the claims within the applicable time constraints and a violation of the TEX.INS.CODE §541.056.

73. Defendant Arch's delay of the payment of Plaintiff's claim following its receipt of all items, statements, and forms reasonably requested and required, for longer than the amount of time provided for, as described above, constitutes a non-prompt payment of the claims. TEX.INS.CODE §541.058.

COUNT VII – BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

74. Defendant Arch's conduct constitutes a breach of the common law duty of good faith and fair dealing owed to the insured in insurance contracts.

75. Defendant Arch's failure, as described above, to adequately and reasonably investigate and evaluate Plaintiff's claim, although, at that time, Defendant Arch knew or should have known by the exercise of reasonable diligence that its liability was reasonable clear, constitutes a breach of the duty of good faith and fair dealing.

**J. CAUSES OF ACTION AGAINST DEFENDANT MAZEY, YORK AND
WORLEY
COUNT VIII – UNFAIR SETTLEMENT PRACTICES**

76. Plaintiff incorporates the preceding paragraphs as though fully stated herein.

77. Defendant Adjusters, adjusters on behalf of Arch, is required to comply with Tex. Ins. Code §§ 541.051; 541.060; 541.061; and 541.151.

78. Defendant Adjusters are individually liable for their unfair and deceptive acts, irrespective of the fact that he was acting on behalf of Defendant Arch. Defendant Adjusters are required to comply with Tex. Ins. Code § 541.151, and is defined by the Texas Insurance Code as a “Person.” Under Tex. Ins. Code § 541.002(2), “Person” is defined as any individual, corporation, association, partnership, reciprocal, or inter-insurance exchange, Lloyds plan, fraternal benefit society, or other legal entity engaged in the business of insurance, including an agent, broker, adjuster, or life and health insurance counselor. TEX.INS.CODE §541.002(2) (emphasis added). (See also *Liberty Mutual Insurance Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 484 (Tex.1998) (holding an insurance company employee to be a “person” for the purpose of bringing a cause of action against them under the Texas Insurance Code and subjecting them to individual liability).

79. Defendant Adjusters’ conduct, as specifically described in Section G, constitutes multiple violations of the Texas Insurance Code, Unfair Settlement Practices. TEX.INS.CODE §541.060(a). All violations under this article are made actionable by TEX.INS.CODE §541.151. Defendant Adjusters’ unfair settlement practice, as described above, of misrepresenting to Plaintiff material facts relating to the coverage at issue, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX.INS.CODE §541.060(1).

80. Defendant Adjusters’ unfair settlement practice, as specifically described in Section G, of failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the

claims, even though liability under the Policy is reasonably clear, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX.INS.CODE §541.060(2)(A).

81. The unfair settlement practice of Defendant Adjusters, as specifically described in Section G, of failing to promptly provide the Plaintiff with a reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for the offer of a compromise settlement of Plaintiff's claim, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX.INS.CODE §541.060(3).

82. Defendant Adjusters' unfair settlement practice, as specifically described in Section G, of failing within a reasonable time to affirm or deny coverage of the claims to Plaintiff or to submit a reservation of rights to Plaintiff, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX.INS.CODE §541.060(4).

83. Defendant Adjusters' unfair settlement practice, as specifically described in Section G, of refusing to pay Plaintiff's claim without conducting a reasonable investigation, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX.INS.CODE §541.060(7).

84. Defendant Adjusters conduct described above compelled Plaintiff to initiate a lawsuit to recover amounts due under its policy. This continued failure compelled Plaintiff to file suit. TEX.INS.CODE §542.003(5).

K. KNOWLEDGE AND INTENT

85. Each of the acts described above, together and singularly, was done "knowingly" and "intentionally" and was a producing cause of Plaintiff's damages described herein.

L. JURY DEMAND

86. Plaintiff respectfully demands a trial by jury.

M. REQUEST FOR DISCLOSURE

87. Pursuant to Rule 194, Plaintiff requests that Defendants disclose, within fifty (50) days of service of this request, the information outlined in T.R.C.P. 194(2)(a)(1).

N. DAMAGES AND PRAYER

88. **WHEREFORE, PREMISES CONSIDERED**, Plaintiff herein, complains of Defendants and prays that they be cited to appear and answer and that on a final trial on the merits, Plaintiff recover from Defendants the following:

89. Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the proximate and/or contributing causes of damages sustained by Plaintiff.

90. For breach of contract by Defendants, Plaintiff is entitled to regain the benefit of its bargain, Plaintiff is entitled to actual damages, which include the loss of the benefits that should have been paid pursuant to the policies, together with attorneys' fees, pursuant to Tex. Civ. Prac. & Rem. Code § 38.01 *et seq.*

91. For noncompliance with the Texas Insurance Code by Defendants, Plaintiff is entitled to actual damages, which includes the loss of the benefits that should have been paid pursuant to the policies, including but not limited to direct and indirect consequential damages, mental anguish, court costs, and attorneys' fees. For knowing conduct of the acts complained of, Plaintiff asks for three times their actual damages, pursuant to Tex. Ins. Code § 541.152 *et seq.*

92. For violation of the Texas Deceptive Trade Practices Act by Defendants, Plaintiff is entitled to actual damages which include the loss of benefits that should have been paid pursuant to the policies, including but not limited to direct and indirect consequential damages, mental anguish,

court costs, and attorneys' fees. For knowing conduct of the acts complained of, Plaintiff asks three times in actual damages pursuant to Tex. Ins. Code § 17.50(b)(1),

93. The denial and/or wrongful delay to provide Plaintiff with the insurance benefits by Defendants was part of a common plan, routine, scheme, and design calculated to deny insurance benefits to policyholders.

94. In order to punish Defendants and to set an example and thereby prevent other policyholders from being treated in this manner, exemplary damages should be awarded. Accordingly, Plaintiff seeks exemplary damages in an amount the jury deems appropriate to accomplish these goals.

95. For violations of the Common Law Duty of Good Faith and Fair Dealing by Defendants, Plaintiff is entitled to actual damages, direct and indirect consequential damages, mental anguish, and exemplary damages.

96. Plaintiff seeks any and all relief to which the Court may find Plaintiff to be justly entitled.

Respectfully submitted,

GREEN & BARTON

BY: /s/Daniel P. Barton

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ATTORNEYS FOR PLAINTIFF

CIVIL CASE INFORMATION SHEET (REV. 2/13)

CAUSE NUMBER (FOR CLERK USE ONLY):


COURT (FOR CLERK USE ONLY):

Wahlberg McCreary, Inc., et al v. Arch Insurance Group, Inc. et al

STYLED

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet: Name: Daniel P. Barton Email: dbarton@bartonlawgroup.com Address: 1201 Shepherd Drive City/State/Zip: Houston, TX 77007 Telephone: (713) 227-4747 Fax: (713) 621-5900 Signature:  State Bar No: 00789774		Names of parties in case: Plaintiff(s)/Petitioner(s): WAHLBERG MCCREARY, INC. MCCREARY MANUFACTURING CO., INC. Defendant(s)/Respondent(s): ARCH INSURANCE GROUP, INC. YORK RISK SERVICES GROUP WORLEY CSD, STEVE MAZEY [Attach additional page as necessary to list all parties]		Person or entity completing sheet is: <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: Additional Parties in Child Support Case: Custodial Parent: Non-Custodial Parent: Presumed Father:	
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract <input checked="" type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:		Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:			
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax:		Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:			
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do not select if it is a family law case):					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input checked="" type="checkbox"/> Over \$1,000,000					

CIVIL PROCESS REQUEST

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING
FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: _____ CURRENT COURT: _____

TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): **PLAINTIFFS' ORIGINAL PETITION**

FILE DATE OF MOTION: 07/20/2017
Month/ Day/ Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME: Arch Insurance Group, Inc.
ADDRESS: 4801 Woodway Dr., Houston TX 77056- 1884, or wherever he may be found
AGENT, (if applicable): Bob Gefers

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): Citation

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP ☐ CONSTABLE
☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____ Phone: _____
☐ MAIL ☐ CERTIFIED MAIL
☐ PUBLICATION:
Type of Publication: ☐ COURTHOUSE DOOR, or
☐ NEWSPAPER OF YOUR CHOICE: _____
☒ OTHER, explain Return to undersigned attorney

2. NAME: Worley CSD
ADDRESS: 1999 Bryan Street, Suite 900, Dallas TX 75201-3136 or wherever he may be found
AGENT, (if applicable): C.T.Corp

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): Citation

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP ☐ CONSTABLE
☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____ Phone: _____
☐ MAIL ☐ CERTIFIED MAIL
☐ PUBLICATION:
Type of Publication: ☐ COURTHOUSE DOOR, or
☐ NEWSPAPER OF YOUR CHOICE: _____
☒ OTHER, explain Return to undersigned attorney

ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:

NAME: Daniel P. Barton TEXAS BAR NO./ID NO. 00789774
MAILING ADDRESS: 1201 Shepherd Drive, Houston, TX 77007
PHONE NUMBER: (713) 227-4747 FAX NUMBER: (713) 621-5900
area code phone number area code fax number
EMAIL ADDRESS: dbarton@bartonlawgroup.com or angela@bartonlawgroup.com

CIVIL PROCESS REQUEST

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING
FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: _____ CURRENT COURT: _____

TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): **PLAINTIFFS' ORIGINAL PETITION**

FILE DATE OF MOTION: 07/20/2017
Month/ Day/ Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME: York Risk Services, Inc
ADDRESS: 211 E. 7th Street, Suite 620, Austin TX 78701-3218 or wherever he may be found
AGENT, (if applicable): Corporation Service Co.

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): Citation

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP ☐ CONSTABLE
☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____ Phone: _____
☐ MAIL ☐ CERTIFIED MAIL
☐ PUBLICATION:
Type of Publication: ☐ COURTHOUSE DOOR, or
☐ NEWSPAPER OF YOUR CHOICE: _____
☒ OTHER, explain Return to undersigned attorney

2. NAME: Steve Mazey
ADDRESS: 1117-A Patricia, San Antonio TX 78213-1332 or wherever he may be found
AGENT, (if applicable): _____

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): _____

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP ☐ CONSTABLE
☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____ Phone: _____
☐ MAIL ☐ CERTIFIED MAIL
☐ PUBLICATION:
Type of Publication: ☐ COURTHOUSE DOOR, or
☐ NEWSPAPER OF YOUR CHOICE: _____
☒ OTHER, explain Return to undersigned attorney

ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:

NAME: Daniel P. Barton TEXAS BAR NO./ID NO. 00789774
MAILING ADDRESS: 1201 Shepherd Drive, Houston, TX 77007
PHONE NUMBER: (713) 227-4747 FAX NUMBER: (713) 621-5900
area code phone number area code fax number
EMAIL ADDRESS: dbarton@bartonlawgroup.com or angela@bartonlawgroup.com

CAUSE NO. 201748281

RECEIPT NO.

0.00

MTA

TR # 73398388

PLAINTIFF: WAHLBERG MCCREARY INC
vs.
DEFENDANT: ARCH INSURANCE GROUP INC

In The 80th
Judicial District Court
of Harris County, Texas
80TH DISTRICT COURT
Houston, TX

CITATION

THE STATE OF TEXAS
County of Harris

TO: ARCH INSURANCE GROUP INC MAY BE SERVED BY SERVING ITS REGISTERED AGENT
BOB GEFERS

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION

This instrument was filed on the 20th day of July, 2017 in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 26th day of July, 2017, under my hand and seal of said Court.

Issued at request of:
BARTON, DANIEL
1201 SHEPHERD DRIVE
HOUSTON, TX 77007
Tel: (713) 227-4747
Bar No.: 789774



Chris Daniel

CHRIS DANIEL, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)

Generated By: BRINCEFIELD, REGINA LYNN
G8B//10735142

OFFICER/AUTHORIZED PERSON RETURN

Came to hand at _____ o'clock _____ M., on the _____ day of _____, _____.

Executed at (address) _____ in

_____ County at _____ o'clock _____ M., on the _____ day of _____,

_____, by delivering to _____ defendant, in person, a

true copy of this Citation together with _____ copy(ies) of the Petition

attached thereto and I endorse said copy of the Citation the date of delivery.

To certify which I affix my hand and official seal this _____ day of _____, _____.

FEE: \$ _____

_____ of _____ County, Texas

Affiant

By _____ Deputy

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, _____.

Notary Public

SERVICE AFFIDAVIT

No. 2017-48281

**WAHLBERG MCCREARY, INC.
MCCREARY MANUFACTURING CO.,
INC.
VS.
ARCH INSURANCE GROUP, INC.
YORK RISK SERVICES GROUP,
WORLEY CSD, STEVE MAZEY**

**: IN THE DISTRICT COURT OF
:
:
: HARRIS COUNTY, TEXAS
:
: 80TH JUDICIAL DISTRICT
:
:**

On this the 1st Day of September, 2017, **Charles Fitzpatrick** appeared before me, the undersigned Notary Public and after being duly sworn, deposed and stated as follows:

1. My name is **Charles Fitzpatrick**. I am over eighteen (18) years of age and am fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.
2. I am a Certified Civil Process Server authorized under written order of the Supreme Court of Texas service civil process in the State of Texas, including Harris County.
3. I was employed to serve the defendant a copy of **Citation & Plaintiff's Original Petition**.
4. I am not a party to this case and I have no interest in the outcome of this case.
5. I have never been convicted of a felony or misdemeanor in any City, State or Federal Jurisdiction.

Came to Hand at 10:00AM on 08/04/2017. **Served at 87 Williamsburg Ln., Houston, Texas 77024 in Harris County on 09/01/2017 at 10:31AM.** I hand served a copy of the Citation & Plaintiff's Original Petition to defendant **Arch Insurance Group Inc.** by serving its **Registered Agent Bob Gefers**.

Charles Fitzpatrick
State Certified Civil Process Server
SCH000010505
Exp: September 30, 2019

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, in and for said county and state, on this the 1st of September, 2017 personally appeared **Charles Fitzpatrick**, known to me, after being identified through the driver's license, to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the statements contained in the foregoing affidavit are true and correct.

SUBSCRIBED AND SWORN TO ME on this the 1st of September, 2017.



ADRIAN LIRA
Notary Public, State of Texas
My Commission Expires
March 04, 2019

Notary Public in and for the State of Texas

CAUSE NO. 201748281

RECEIPT NO. 0.00 MTA
***** TR # 73398396PLAINTIFF: WAHLBERG MCCREARY INC
vs.
DEFENDANT: ARCH INSURANCE GROUP INCIn The 80th
Judicial District Court
of Harris County, Texas
80TH DISTRICT COURT
Houston, TX

CITATION

THE STATE OF TEXAS
County of Harris

46478-2

TO: WORLEY CSD MAY BE SERVED BY SERVING CT CORP
(OR WHEREVER THE COMPANY MAY BE FOUND)
1999 BRYAN STREET SUITE 900 DALLAS TX 75201 - 3136
Attached is a copy of PLAINTIFF'S ORIGINAL PETITION

This instrument was filed on the 20th day of July, 2017, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 26th day of July, 2017, under my hand and seal of said Court.

Issued at request of:
BARTON, DANIEL
1201 SHEPHERD DRIVE
HOUSTON, TX 77007
Tel: (713) 227-4747
Bar No.: 789774

Chris Daniel

CHRIS DANIEL, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)Generated By: BRINCEFIELD, REGINA LYNN
G8B//10735142

OFFICER/AUTHORIZED PERSON RETURN

Came to hand at _____ o'clock ____ M., on the _____ day of _____, _____.
Executed at (address) _____ in
_____ County at _____ o'clock ____ M., on the _____ day of _____,
_____, by delivering to _____ defendant, in person, a
true copy of this Citation together with the accompanying _____ copy(ies) of the Petition
attached thereto and I endorsed on said copy _____ Citation the date of delivery.
To certify which I affix my hand official _____ day of _____, _____.
FEE: \$ _____**AFFIDAVIT
ATTACHED**_____ of _____ County, Texas
By _____ Deputy
A.On this day, _____, known to me to be the person whose
signature appears _____, personally appeared. After being by me duly sworn,
he/she stated that _____ was executed by him/her in the exact manner recited on the
return.SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, _____.

Notary Public

SERVICE AFFIDAVIT

No. 2017-48281

**WAHLBERG MCCREARY, INC.
MCCREARY MANUFACTURING CO.,
INC.
VS.
ARCH INSURANCE GROUP, INC.
YORK RISK SERVICES GROUP,
WORLEY CSD, STEVE MAZEY**

**: IN THE DISTRICT COURT OF
:
:
: HARRIS COUNTY, TEXAS
:
: 80TH JUDICIAL DISTRICT
:
:**

On this the 30th Day of August, 2017, Joseph Morse appeared before me, the undersigned Notary Public and after being duly sworn, deposed and stated as follows:

1. My name is Joseph Morse. I am over eighteen (18) years of age and am fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.
2. I am a Certified Civil Process Server authorized under written order of the Supreme Court of Texas service civil process in the State of Texas, including Harris County.
3. I was employed to serve the defendant a copy of Citation & Plaintiff's Original Petition.
4. I am not a party to this case and I have no interest in the outcome of this case.
5. I have never been convicted of a felony or misdemeanor in any City, State or Federal Jurisdiction.

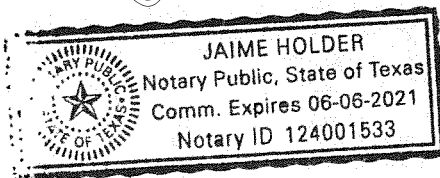
Came to Hand at 10:00 AM on 08/04/2017. Served at 1999 Bryan Street, Suite 900, Dallas, TX 75201 in Dallas County on 8/11/2017 at 9:15 am. Certified Mail (7017 0530 0001 0861 8355) delivered a copy of the Citation & Plaintiff's Original Petition to defendant Worley CSD may be served by serving CT Corp.

Joseph Morse
State Certified Civil Process Server
SCH000003036
Exp: September 30, 2019

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, in and for said county and state, on this the 30th of August, 2017 personally appeared Joseph Morse, known to me, after being identified through the driver's license, to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the statements contained in the foregoing affidavit are true and correct.

SUBSCRIBED AND SWORN TO ME on this the 30th of August, 2017.



Notary Public in and for the State of Texas

USPS Tracking® Results

FAQs > (<http://faq.usps.com/?articleId=220900>)

Track Another Package +

Remove X

Tracking Number: 70170530000108618355

Delivered

Updated Delivery Day: Friday, August 11, 2017 ⓘ

Product & Tracking Information

See Available Actions

Postal Product:

Features:
Certified Mail™

DATE & TIME

STATUS OF ITEM

LOCATION

August 11, 2017, 9:15 am

Delivered

DALLAS, TX 75201

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Worley CSD
Registered Agent: CT Corporation
1999 Bryan Street, Suite 900
Dallas, TX 75201



9590 9402 2222 6193 5008 55

2. Article Number (Transfer from service label)

7017 0530 0001 0861 8355

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Date of Delivery

AUG 11 2017

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

46478-1

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Mail Restricted Delivery (D)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

9/1/2017 10:17 AM
 Chris Daniel - District Clerk Harris County
 Envelope No. 19197283
 By: ALEX CASARES
 Filed: 9/1/2017 10:17 AM

CAUSE NO. 201748281

RECEIPT NO. 0.00 MTA
 ***** TR # 73398407

PLAINTIFF: WAHLBERG MCCREARY INC
 vs.
 DEFENDANT: ARCH INSURANCE GROUP INC

In The 80th
 Judicial District Court
 of Harris County, Texas
 80TH DISTRICT COURT
 Houston, TX

CITATION

46478-4

THE STATE OF TEXAS
 County of Harris

TO: YORK RISK SERVICES INC MAY BE SERVED BY SERVING ITS REGISTERED AGENT
 CORPORATION SERVICE CO
 (OR WHEREVER THE COMPANY MAY BE FOUND)
 211 E 7TH STREET SUITE 620 AUSTIN TX 78701 - 3218
 Attached is a copy of PLAINTIFF'S ORIGINAL PETITION

This instrument was filed on the 20th day of July, 2017, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 26th day of July, 2017, under my hand and seal of said Court.

Issued at request of:
 BARTON, DANIEL
 1201 SHEPHERD DRIVE
 HOUSTON, TX 77007
 Tel: (713) 227-4747
 Bar No.: 789774



Chris Daniel

CHRIS DANIEL, District Clerk
 Harris County, Texas
 201 Caroline, Houston, Texas 77002
 (P.O. Box 4651, Houston, Texas 77210)

Generated By: BRINCEFIELD, REGINA LYNN
 G8B//10735142

OFFICER/AUTHORIZED PERSON RETURN

Came to hand at _____ o'clock ____ M., on the _____ day of _____, ____.

Executed at (address) _____ in

_____ County at _____ o'clock ____ M., on the _____ day of _____,

_____, by delivering to _____ defendant, in person, a

true copy of this Citation together with the _____ copy(ies) of the Petition

attached thereto and I endorsed on said _____ Citation the date of delivery.

To certify which I affix my hand and official seal this _____ day of _____, ____.

FEE: \$ _____

_____ of _____ County, Texas

By _____ Deputy

Affiant

On this day, _____, known to me to be the person whose signature appears _____ return, personally appeared. After being by me duly sworn, he/she stated that _____ as executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED: I, _____, DO SORE ME, on this _____ day of _____, ____.

 Notary Public

SERVICE AFFIDAVIT

No. 2017-48281

**WAHLBERG MCCREARY, INC.
MCCREARY MANUFACTURING CO.,
INC.
VS.
ARCH INSURANCE GROUP, INC.
YORK RISK SERVICES GROUP,
WORLEY CSD, STEVE MAZEY**

**: IN THE DISTRICT COURT OF
:
:
:
:
:
:
:
:
:
:**

HARRIS COUNTY, TEXAS

80TH JUDICIAL DISTRICT

On this the 30th Day of August, 2017, Joseph Morse appeared before me, the undersigned Notary Public and after being duly sworn, deposed and stated as follows:

1. My name is Joseph Morse. I am over eighteen (18) years of age and am fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.
2. I am a Certified Civil Process Server authorized under written order of the Supreme Court of Texas service civil process in the State of Texas, including Harris County.
3. I was employed to serve the defendant a copy of Citation & Plaintiff's Original Petition.
4. I am not a party to this case and I have no interest in the outcome of this case.
5. I have never been convicted of a felony or misdemeanor in any City, State or Federal Jurisdiction.

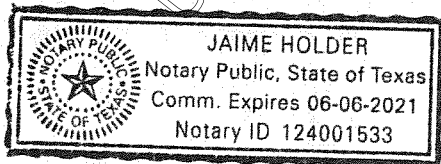
Came to Hand at 10:00 AM on 08/04/2017. Served at 211 East 7th Street, Suite 620, Austin, TX 78701 in Travis County on 8/10/2017 at 10:23 am. I hand served a copy of the Citation & Plaintiff's Original Petition to defendant York Risk Services Group, INC. by serving Registered Agent CSC.

Joseph Morse
State Certified Civil Process Server
SCH000003036
Exp: September 30, 2019

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, in and for said county and state, on this the 30th of August, 2017 personally appeared Joseph Morse, known to me, after being identified through the driver's license, to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the statements contained in the foregoing affidavit are true and correct.

SUBSCRIBED AND SWORN TO ME on this the 30th of August, 2017.



Notary Public in and for the State of Texas

USPS Tracking® Results

FAQs > (<http://faq.usps.com/?articleId=220900>)

Track Another Package +

Remove X

Tracking Number: 70170530000108618409

Delivered

Updated Delivery Day: Thursday, August 10, 2017 ⓘ

Product & Tracking Information

See Available Actions

Postal Product:

Features:

Certified Mail™

DATE & TIME

STATUS OF ITEM

LOCATION

August 10, 2017, 10:23 am

Delivered

AUSTIN, TX 78741

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

York Risk Services, Inc.
Registered Agent: CSC
211 E. 7th St., Suite 620
Austin, TX 78701



9590 9402 2222 6193 5010 67

2. Article Number (Transfer from service label)

7017 0530 0001 0861 8409

PS Form 3811, July 2015 PSN 7530-02-000-9003

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X  ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

AUG 10 2017

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

46478-4

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

9/5/2017 9:30 AM
Chris Daniel - District Clerk Harris County
Envelope No. 19221490
By: Bonnie Lugo
Filed: 9/5/2017 9:30 AM

CAUSE NO. 2017-48281

WAHLBERG MCCREARY, INC., and	§	IN THE DISTRICT COURT OF
MCCREARY MANUFACTURING CO.,	§	
INC.	§	
	§	
Plaintiffs,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
ARCH INSURANCE GROUP, INC.,	§	
YORK RISK SERVICES GROUP,	§	
WORLEY CSD, and STEVE MAZEY	§	
	§	
Defendants.	§	80TH JUDICIAL DISTRICT

DEFENDANT'S ORIGINAL ANSWER TO PLAINTIFFS' ORIGINAL PETITION

Defendant York Risk Services Group, Inc. ("York") files this Original Answer in response to the Original Petition filed on July 20, 2017 (the "Petition"), and any amendments or supplements thereto, by Plaintiffs Wahlberg McCreary, Inc. and McCreary Manufacturing Co, Inc. ("Plaintiffs"). York reserves the right to amend its original answer pursuant to Rule 63 of the Texas Rules of Civil Procedure or any other applicable rule or court order.

GENERAL DENIAL

1. As authorized by Rule 92 of the Texas Rules of Civil Procedure, York generally denies each and every, all and singular, material allegation contained in the Petition, and any amendments or supplements thereto, and demands that

Plaintiffs provide strict proof of each and every allegation by the appropriate burden of proof, as required by the Constitution and laws of the State of Texas.

AFFIRMATIVE DEFENSES AND OTHER DEFENSIVE MATTERS

Subject to and without waiving their general denial, and for further answer if necessary, York, pursuant to Tex. R. Civ. P. 94 and Texas law, asserts the following affirmative defenses and other defensive matters, each of which is pled in the alternative to the extent necessary.

2. Pleading in the alternative, to the extent necessary, York asserts that Plaintiffs' alleged claims are barred or limited, in whole or in part, by the terms, conditions, limitations, exclusions, deductibles, and other provisions contained in any applicable insurance policy.

3. Pleading in the alternative, to the extent necessary, York asserts that Plaintiffs' alleged claims are barred, in whole or in part, to the extent Plaintiffs failed to mitigate their alleged damages, if any, and to the extent Plaintiffs' own acts, errors or omissions proximately caused or contributed to Plaintiffs' alleged damages.

4. Pleading in the alternative, to the extent necessary, York asserts that Plaintiffs' alleged injuries and damages, if any, were the result of conditions not caused, in whole or in part, by any act or omission by or on behalf of York.

5. Pleading in the alternative, to the extent necessary, York asserts that Plaintiffs' alleged injuries and damages, if any, were due to a new and independent, superseding, or intervening cause, in whole or in part, for which York is not responsible.

6. Pleading in the alternative, to the extent necessary, York asserts that Plaintiffs' alleged injuries and damages, if any, were proximately caused, in whole or in part, by the acts, omissions, fault, negligence, responsibility, or other conduct by or on behalf of other persons or entities for whom York is not legally responsible.

7. Pleading in the alternative, to the extent necessary, York asserts and pleads the application of Chapters 32 and 33 of the Texas Civil Practice & Remedies Code, and seeks a comparison of its responsibility, any such responsibility being expressly denied, with Plaintiffs, any codefendants, any and all settling parties, all designated responsible third parties, and all responsible non-parties, if any. York requests that any judgment rendered reflect the rights of contribution accorded in Chapter 33 of the Texas Civil Practice & Remedies Code.

8. Pleading in the alternative, to the extent necessary, York asserts that Plaintiffs' claims are barred, in whole or in part, by comparative responsibility, and that the responsibility of other persons or entities must be proportioned as required by Chapters 32 and 33 of the Texas Civil Practice & Remedies Code.

9. Pleading further, and in the alternative, to the extent necessary, and with respect to Plaintiffs' allegations of punitive and/or exemplary damages, which are otherwise denied, York pleads as follows:

- a. Plaintiffs' alleged claim for punitive damages against York cannot be maintained because an award of punitive damages under current Texas law would be void for vagueness. Among other deficiencies, there is an absence of adequate notice of what alleged conduct is subject to punishment, an absence of adequate notice as to the maximum amount of punitive damages that a jury may impose, a risk that punitive damages will be imposed retrospectively, and it would permit and encourage arbitrary and discriminatory enforcement, all in violation of the due process clause of the Fourteenth Amendment to the United States Constitution, Article 1, Sections 13 and 19 of the Texas Constitution, and the common law and public policies of the State of Texas.
- b. Plaintiffs' alleged claim for punitive damages against York cannot be maintained because any award of punitive damages under Texas law would be by a jury that (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of a punitive damages award, (2) is not adequately instructed on the limits on punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the residence, wealth, and corporate status of any defendant, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to adequate trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards. Any such verdict, the likelihood of which is otherwise denied, would violate York's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the Article I, Sections 13 and 19, and would be

improper under the common law and public policies of the State of Texas.

- c. To the extent that the law of Texas permits punishment to be measured by the net worth or financial status of a defendant, and imposes greater punishment on a defendant with larger net worth, then any such punitive award, the likelihood of which is expressly denied, would be unconstitutional because it permits arbitrary, capricious and fundamentally unfair punishments, allows bias and prejudice to infect verdicts imposing punishment, allows punishment to be imposed based on lawful profits and conduct of a defendant in other States, and allows dissimilar treatment of similarly situated defendants, in violation of the due process and equal protection provisions of the Fourteenth Amendment to the United States Constitution, the Commerce Clause of the United States Constitution, and Article I, Sections 13 and 19 of the Texas State Constitution.

10. York reserves the right to assert additional affirmative defenses pursuant to Tex. R. Civ. P. 94 after completing a reasonable inquiry into each and every material allegation contained in the Petition, and any amendments or supplements thereto.

CONCLUSION AND PRAYER

Defendant York Risk Services Group, Inc. respectfully requests that judgment be granted in its favor, that Plaintiffs Wahlberg McCreary, Inc. and McCreary Manufacturing Co. Inc. take nothing by reason of their claims against York Risk Services Group, Inc., and that Defendant York Risk Services Group, Inc. be granted all such other and further relief, at law and in equity, general and special, to which it may be justly entitled.

Dated: September 5, 2017.

Respectfully submitted,

PARSONS MCENTIRE MCCLEARY & CLARK
PLLC

/s/ Robert M. Rosen

Robert M. Rosen

State Bar No. 24060520

rrosen@pmmclaw.com

Ryan D. Starbird

State Bar No. 24075623

rstarbird@pmmclaw.com

1700 Pacific Avenue, Suite 4400

Dallas, Texas 75201

Telephone: (214) 237-4300

Facsimile: (214) 237-4340

Attorneys for Defendant

York Risk Services Group, Inc.

Unofficial Copy Office of Chief District Clerk

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served on all known counsel of record in accordance with the Texas Rules of Civil Procedure on September 5, 2017.

Daniel P. Barton
GREEN & BARTON
1201 Shepherd Drive
Houston, Texas 77007

Via U.S. Mail

/s/ Ryan D. Starbird
Ryan D. Starbird

Unofficial Copy Office of Chris Daniel District Clerk

CAUSE NO. 2017-48281

WAHLBERG MCCREARY, INC.	§	IN THE DISTRICT COURT OF
MCCREARY MANUFACTURING CO.,	§	
INC.	§	
<i>Plaintiffs</i>	§	
	§	
VS.	§	
	§	
	§	HARRIS COUNTY, TEXAS
ARCH INSURANCE GROUP, INC.	§	
YORK RISK SERVICES GROUP,	§	
WORLEY CSD, STEVE MAZEY	§	
	§	
<i>Defendants</i>	§	80TH JUDICIAL DISTRICT

**DEFENDANTS ARCH INSURANCE GROUP, INC., YORK RISK SERVICES
GROUP, WORLEY CSD and STEVE MAZEY'S
ORIGINAL ANSWER AND GENERAL DENIAL**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, Arch Insurance Group, Inc., York Risk Services Group, Worley CSD and Steve Mazey files this their Original Answer and General Denial to Plaintiffs' Original Petition and would respectfully show the court as follows:

I. GENERAL DENIAL

Defendants assert a general denial as authorized by Rule 92 of the Texas Rules of Civil Procedure and respectfully requests that Plaintiffs be required to prove the charges and allegations made against it by a preponderance of the evidence as is required by the Constitution and laws of the State of Texas.

II. PRAYER

Defendants request that Plaintiffs take nothing by its claims and that it be granted any and all other relief to which they may show itself justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/James N. Isbell

James N. Isbell

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on all counsel of record, pursuant to the Texas Rules of Civil Procedure, on this the 22nd day of September, 2017.

Robert D. Green
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/s/ James N. Isbell

James N. Isbell